

APPEAL NO. 93395

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on April 15, 1993, (hearing officer) presiding as hearing officer. He determined that appellant's (claimant) back problems are not related to or a part of his (date of injury), compensable injury. Claimant appeals urging that his back was injured on (date of injury), and that he immediately reported it to his supervisor and that he repeatedly told his doctor about his back. The respondent (carrier) asserts that there is sufficient evidence to support the findings of the hearing officer and asks that the decision be affirmed.

DECISION

Finding the evidence of record sufficient to support the determinations of the hearing officer, the decision is affirmed.

The single issue for resolution in this case is whether the claimant's back problems are related to or a part of a compensable injury he sustained on November 11, 1991. There was conflicting evidence, both testimonial and documentary, and the claimant's credibility became a significant factor which the hearing officer quite apparently resolved against the claimant. As we have repeatedly stated, Article 8308-6.34(e) of the 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence before him. Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. He resolves conflicts and inconsistencies in the testimony and evidence (Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.- Amarillo 1978, no writ)) and may believe all, part or none of the testimony of a witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). Only in the situation where the hearing officer's decision is found to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust is there a sound basis to disturb his decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Worker's Compensation Commission Appeal No. 92232 July 20, 1992.

There was evidence to establish that the claimant sustained an injury on (date of injury), in lifting some boxes and that he felt pain in his groin area. The evidence is conflicting as to whether he notified anyone in a supervisory or managerial capacity. However, it is clear he continued performing his normal duties. In early March 1992, he was diagnosed as having a double hernia and he subsequently had surgery. Although the carrier states that proper and timely notice was not given, they accepted the claimant's workers' compensation claim and paid benefits. The Claimant returned to light duty work in April and, according to his testimony, several days later was hit in the back or hip area by some boxes that were being pushed on a dolly. He stated that he felt pain but indicated it would be alright. There is a conflict as to whether or not this incident was reported to any supervisory or managerial personnel. He continued to work and several months later he indicates his back was bothering him considerably. He underwent an MRI in November 1992 and it was determined that he had a large herniated nucleus pulposus at L4-5 with

probable compression of the right neural root.

Medical records introduced are conflicting; however, the first indication of a complaint of a back or hip condition is in September of 1992. The first report of a back injury is in medical reports of October and November 1992, and these records appear to relate the back injury to work by referring to boxes striking the claimant in the back. The claimant's treating doctor, Dr. Biddix (Dr. B), states in a December 16, 1992, letter that the claimant did not mention anything about a back injury or back pain during his course of treatment for the hernia condition and that any "back problem occurred at some point after I saw him March 1992 if in fact it occurred at all in the recent past. My suggestion would be this gentleman has probably had a lower back problem for some extensive period of time and found it convenient to mention it at this time for personal reasons." Results of a physical examination of the claimant just prior to his hernia surgery in March 1992 gave no indication of any back-related problem and the report states that the neurologic examination is within normal limits. Dr. Albert (Dr. A), who saw the claimant in November 1992, indicated in a January 18, 1993, letter, that it was apparently a work injury "as the patient says this happened at a time when he was working, and a number of boxes fell on him while he was bent over" and the boxes hit him in the back (this is similar to the claimant's version of an April 1992, incident). Two letters from Dr. A, both dated February 18, 1993, contain inconsistent opinions concerning the work related nature of the back injury:

I have seen [claimant] in regard to his back injury, which is definitely a work-related injury. However, this back injury is not secondary to, nor related to his on-the-job injury of 11-26-91, for which he originally received treatment for an inguinal hernia.

and,

However, after reviewing my office notes, as well as the notes of a consultation of Dr. Legrand (who stated his medical opinion that the back injury occurred when the hernias occurred), I believe that this back injury and pain had occurred as a result of or was directly related to an on-the-job injury that [claimant] suffered on 11/26/91. At that time, he received treatment for an inguinal hernia.

The testimony of and a log kept by the claimant's supervisor do not indicate any report concerning any back injury, or for that matter, any injury at all reported on 11-26-91. The complaint of an injury which lead to the hernia surgery was only made known sometime later.

Based upon all the evidence before him, the hearing officer decided that the claimant's back injury was not related to or a part of his compensable injury of 11-26-91. This was the only issue before him. We are satisfied that there was sufficient evidence

before him to support his decision and that his determinations were not so against the

great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge